

00-*R*-1763

Entered - 08/28/00 - sb
CL00L0499 - DIANNE C. MITCHELL

CLAIM OF: **THE FAMILY OF ALVENO HORTON, deceased,**
through their attorney,
Jodi S. Dick
Suite 400
235 Peachtree Street
Atlanta, Georgia 30303

For damages alleged to have been sustained as a result of the wrongful
death of Alveno Horton on February 19, 2000 at Roy and Coleman Streets.

THIS ADVERSED REPORT IS APPROVED

BY: *Rosalind Rubens Newell*
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 00L0499

Date: October 19, 2000

Claimant /Victim THE FAMILY OF ALVENO HORTON, deceased
BY: (Atty) Jodi S. Dick
Address: Suite 400, 235 Peachtree Street, Atlanta, Georgia 30303
Subrogation: Claim for Property damage \$ Bodily Injury \$ Not Stated
Date of Notice: 08/21/00 Method: Written, proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 02/19/00 Place: Roy and Coleman Streets
Department Police Division:
Employee involved Officer A. C. Smith Disciplinary Action: None

NATURE OF CLAIM: The claimant's alleges that their family member was wrongfully killed during an altercation with a police officer. An investigation by the Office of Professional Standards found no evidence to support any violation of the Police Rules by Officer Smith. Furthermore, the City is immune from liability as set forth in O.C.G.A. §36-33-3.

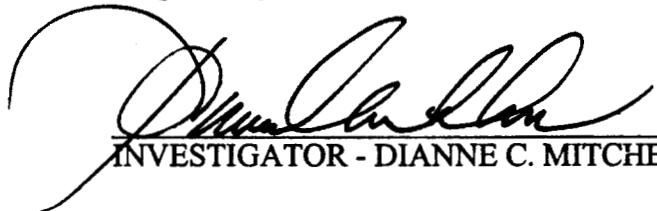
INVESTIGATION:

Statements: City employee Claimant Others Written Oral
Pictures Diagrams Reports: Police X Dept Report Other
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental X Ministerial
Improper Notice More than Six Months Other X Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant negligent City Negligent Joint Claim Abandoned

Respectfully submitted,


INVESTIGATOR - DIANNE C. MITCHELL

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01
Claims Manager:  Concur/date 10-19-00
Committee Action: Council Action

Dianne

() JODI S. DICK ()
ATTORNEY AT LAW

MT Mitchell
08/21/00
[Signature]

SUITE 400
235 PEACHTREE STREET
ATLANTA, GEORGIA 30303

TELEPHONE: 404-524-0966
FACSIMILE: 404-524-7732
VOICE MAIL: 770-734-7769

August 15, 2000

ENTERED - 8-28-00 - SB
00L0499 - DIANNE MITCHELL

Certified Mail No. 70993400000832933576

City of Atlanta
c/o Honorable Bill Campbell
Mayor
68 Mitchell St. S.W., Suite 2400
Atlanta, Ga. 30335

Certified Mail No. 70993400000832933569

City of Atlanta
c/o Robert L. Pitts
Pres., Atlanta City Council
55 Trinity Ave.
Atlanta, Ga. 30335

Dear Mayor Campbell and Mr. Pitts:

Kimberly Dymecki and I represent the family of Alveno Horton in regard to claims of assault and battery, wrongful death and excessive use of force (and whatever additional claims we determine to be appropriate) against certain City of Atlanta Police Officers, the City of Atlanta Police Department and the City of Atlanta. This notice is being provided to you pursuant to the provisions of the Official Code of Ga. Ann. §36-33-5 for the purpose of advising you of our factual allegations and to give you an early opportunity to resolve these claims.

Alveno Horton was a 34 year old black male who was shot and killed by APD Officer Anthony Smith on or about February 19, 2000 at approximately 1:30 a.m. According to the police report prepared by Officer Smith, Officer Smith was chasing Mr. Horton on foot (in the vicinity of Roy Street and Coleman Street in the City of Atlanta) because he had fled from an alleged hit and run accident nearby. After Mr. Horton was apprehended, Officer Smith reported that "the suspect attempted to grab my weapon and being in fear of my life, a round was discharged." A copy of this report is attached.

We are still in the process of investigating this claim and had hoped to have obtained much more information by this time. We have received reports from the GBI and we have been awaiting the receipt of the Internal Affairs report prepared by APD (OPS), which was requested some time ago. However, in order to comply with the time restrictions imposed by O.C.G.A. 36-33-5, we are forwarding this notice to you now for consideration.

Mayor Campbell / Robert Pitts
August 15, 2000
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We believe that the officer involved in this matter used excessive force and either (1) failed to follow police procedures including, but not limited to use and handling of firearms and the use of deadly force or (2) was inadequately trained on the use of non deadly force and proper techniques when facing a situation as set forth herein. Because we have not yet been able to interview Officer Smith, we have not been able to determine exactly why he acted in the manner in which he did.

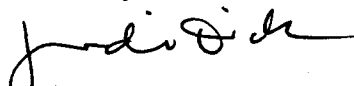
The within notice relating to the negligence of the City of Atlanta and its police force in failing to adequately train its police officers on proper techniques to be used in securing a suspect and alternatives to the use of deadly force is being provided to you with the understanding that you shall consider and act upon this claim within thirty (30) days from the date of its presentation, after which time my clients, on behalf of Mr. Horton, will be allowed by law to institute appropriate action for recovery of damages sustained as a result of this incident.

The anticipated legal action that will be brought on behalf of Mr. Horton will allege, among other things, that the police officers and personnel in question acted in a reckless and grossly negligent manner in the manner in which they ultimately seized Mr. Horton (and killed him) and that the Atlanta Police Department and Chief of Police were negligent in the manner in which officers were trained to deal with situation like the one facing Officer Smith. Any action that we file on behalf of Mr. Horton will include, but will not be limited to, federal claims presented under 42 U.S.C. §1983 as well as pendent state negligence claims relating to assault and battery and wrongful death of Mr. Horton (and any other claims proved by the evidence in the case), which first must be preceded by the within notice.

We would be happy to discuss settlement with you.

I look forward to hearing from you.

Sincerely,



Jodi S. Dick

enclosures

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